



**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Parts 16 and 52**

**[FAC 2019-04; FAR Case 2017-020; Item I; Docket No. 2017-0020;  
Sequence No. 1]**

**RIN 9000-AN53**

**Federal Acquisition Regulation: Ombudsman for Indefinite-  
Delivery Contracts**

**AGENCY:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Final rule.

**SUMMARY:** DoD, GSA, and NASA are issuing a final rule amending the Federal Acquisition Regulation (FAR) to implement a new clause for use in multiple-award indefinite-delivery indefinite-quantity contracts that provides information on the task-order and delivery-order ombudsman.

**DATES:** Effective Date: **[Insert date 30 days after date of publication in the FEDERAL REGISTER].**

**FOR FURTHER INFORMATION CONTACT:** Mr. Michael O. Jackson, Procurement Analyst, at 202-208-4949 for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat

Division at 202-501-4755. Please cite FAC 2019-04, FAR Case 2017-020.

**SUPPLEMENTARY INFORMATION:**

**I. Background.**

DoD, GSA, and NASA published a proposed rule in the Federal Register on November 1, 2018 at 83 FR 54901, to implement a new clause that provides the agency task-order and delivery-order ombudsman's responsibilities and contact information for use in multiple-award indefinite-delivery indefinite-quantity (IDIQ) contracts. FAR 16.504(a)(4)(v) required that the name, address, telephone number, facsimile number, and email address of the agency's task-order and delivery-order ombudsman be included in IDIQ solicitations and contracts, if multiple awards may result from the solicitation. As a result, several agencies created an agency-level contract clause that provides this information to contractors. This rule intends to minimize any impact on contractors resulting from the variety of ways in which the information is communicated by agencies; as such, this rule implements a standardized method to provide the requisite information to contractors via a single contract clause for use by all agencies. Three respondents submitted comments on the proposed rule.

**II. Discussion and Analysis.**

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) reviewed the public comments in the development of the final rule. No changes were made to the final rule as a result of public comments. Edits were made to the final rule for accuracy and clarification. A discussion of the comments is provided as follows:

**A. Analysis of public comments**

1. Comment: A respondent expressed support for the rule.

Response: The Councils acknowledge the support for the rule.

2. Comment: A respondent advised that an agency should be able to designate its small business professional as the agency's task-order and delivery-order ombudsman.

Response: It is the discretion of each agency as to whom they designate as its task-order and delivery-order ombudsman. FAR 16.505(b)(8) only requires that the task-order and delivery-order ombudsman be a senior agency official who is independent of the contracting officer. This rule does not prohibit an agency's small business professional from serving as the task-order and delivery-order ombudsman.

3. Comment: A respondent suggested that the Councils consider elaborating on the policies and procedures to be used by a task-order and delivery-order ombudsman when evaluating and responding to a fair opportunity complaint, as well as the other roles of a task-order and delivery-order ombudsman that are outside of fair opportunity considerations.

Response: The purpose of this rule is to establish a standard way of providing contractors with the name and contact information for an agency's task-order and delivery-order ombudsman. Each agency has the discretion to develop the additional roles and responsibilities of, and policies and procedures for, its task-order and delivery-order ombudsman in execution of their statutory responsibilities; as such, this rule avoids prescribing procedural policies or requirements to be used by all Federal task-order and delivery-order ombudsmen.

**III. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the-Shelf Items**

This rule creates a new FAR clause 52.216-32, Task-Order and Delivery-Order Ombudsman, which serves as a single clause available for use by all agencies when awarding a multiple-award IDIQ contract and provides

contractors with the requisite contact information for the agency task-order and delivery-order ombudsman.

This clause applies to solicitations and contracts for the acquisition of commercial items, including commercially available off-the-shelf (COTS) items, as defined at FAR 2.101. This rule provides contractors with information on the basic responsibilities of and how to contact the task-order and delivery-order ombudsman. Not applying this guidance to contracts for the acquisition of commercial items, including COTS items, would exclude contracts intended to be covered by this rule and could prevent some contractors from receiving the requisite information needed to address a concern with an agency's task-order and delivery-order ombudsman. This rule does not apply to contracts at or below the simplified acquisition threshold (SAT), as the FAR prevents the use of the multiple-award approach when the total estimated value of the contract is less than the SAT.

#### **IV. Executive Orders 12866 and 13563.**

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health

and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

#### **V. Executive Order 13771**

This rule is not subject to E.O. 13771, because this rule is not a significant regulatory action under E.O. 12866.

#### **VI. Regulatory Flexibility Act.**

DoD, GSA, and NASA have prepared a Final Regulatory Flexibility Analysis (FRFA) consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. The FRFA is summarized as follows:

DoD, GSA, and NASA are amending the FAR to implement a new clause that provides information on the task-order and delivery-order ombudsman for multiple-award indefinite-delivery indefinite-quantity (IDIQ) contracts. FAR 16.504(a)(4)(v) required that the name, address, telephone number, facsimile number, and email address of the agency's task-order and delivery-order ombudsman be included in IDIQ solicitations and contracts, if multiple awards may result from the solicitation. As a result, several agencies created an agency-level contract clause that provides this information to contractors. This rule intends to minimize any impact on contractors resulting from the variety of ways in which the information is communicated by agencies; as such, this rule implements a standardized method to provide the requisite information to contractors via a single contract clause for use by all agencies. No public

comments were received in response to the initial regulatory flexibility analysis.

DoD, GSA, and NASA do not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., because it is not creating any new requirements or changing any existing requirements for contractors.

According to data from the Federal Procurement Data System, there were 6,207 new multiple-award contracts awarded in Fiscal Year 2017. Of the 6,207 new awards, 4,477 (72 percent) of these actions were awarded to 3,873 unique small business entities. The final rule applies to all entities that do business with the Federal Government and is not expected to have a significant impact on these entities, regardless of business size.

This rule does not include any new reporting, recordkeeping, or other compliance requirements for small businesses. The rule minimizes any current impact on small entities by providing the name and contact information of the agency task-order and delivery-order ombudsman via a standardized method in multiple-award indefinite-delivery indefinite-quantity contracts and subsequent task and delivery orders, as necessary; as such, all entities awarded a contract or order that is subject to this rule will be able to locate the requisite task-order and delivery-order ombudsman's information without having to look in various locations for the information.

Interested parties may obtain a copy of the FRFA from the Regulatory Secretariat Division. The Regulatory Secretariat has submitted a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration.

#### **VII. Paperwork Reduction Act.**

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

**List of Subjects in 48 CFR Parts 16 and 52**

Government procurement.

Janet M. Fry,  
Director,  
Federal Acquisition Policy Division,  
Office of Government-wide Policy.



Therefore, DoD, GSA, and NASA are issuing a final rule amending 48 CFR parts 16 and 52 as set forth below:

1. The authority citation for parts 16 and 52 continues to read as follows:

**Authority:** 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

## **PART 16—TYPES OF CONTRACTS**

### **16.504 [Amended]**

2. Amend section 16.504 by removing paragraph (a)(4)(v) and redesignating paragraphs (a)(4)(vi) and (a)(4)(vii) as paragraphs (a)(4)(v) and (a)(4)(vi), respectively.

3. Amend section 16.506 by adding paragraph (j) to read as follows.

### **16.506 Solicitation provisions and contract clauses.**

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(j) Insert the clause at 52.216-32, Task-Order and Delivery-Order Ombudsman, in solicitations and contracts when a multiple-award indefinite-delivery indefinite-quantity contract is contemplated. Use the clause with its Alternate I when the contract will be available for use by multiple agencies (e.g., Governmentwide acquisition contracts or multi-agency contracts). When placing orders under the multiple-award contract available for use by

multiple agencies, the ordering activity's contracting officer shall complete paragraph (d)(2) and include Alternate I in the notice of intent to place an order, and in the resulting order.

**PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

4. Add section 52.216-32 to read as follows:

**52.216-32 Task-Order and Delivery-Order Ombudsman.**

As prescribed in 16.506(j), use the following clause:

TASK-ORDER AND DELIVERY-ORDER OMBUDSMAN ([INSERT ABBREVIATED MONTH AND YEAR 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER])

(a) In accordance with 41 U.S.C. 4106(g), the Agency has designated the following task-order and delivery-order Ombudsman for this contract. The Ombudsman must review complaints from the Contractor concerning all task-order and delivery-order actions for this contract and ensure the Contractor is afforded a fair opportunity for consideration in the award of orders, consistent with the procedures in the contract.

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*[Contracting Officer to insert name, address, telephone number, and email address for the Agency Ombudsman or provide the URL address where this information may be found.]*

(b) Consulting an ombudsman does not alter or postpone the timeline for any other process (e.g., protests).

(c) Before consulting with the Ombudsman, the Contractor is encouraged to first address complaints with the Contracting Officer for resolution. When requested by the Contractor, the Ombudsman may keep the identity of the concerned party or entity confidential, unless prohibited by law or agency procedure.

**(End of clause)**

Alternate I. As prescribed in 16.506(j), add the following paragraph (d) to the basic clause.

(d) Contracts used by multiple agencies.

(1) This is a contract that is used by multiple agencies. Complaints from Contractors concerning orders placed under contracts used by multiple agencies are primarily reviewed by the task-order and delivery-order Ombudsman for the ordering activity.

(2) The ordering activity has designated the following task-order and delivery-order Ombudsman for this order:

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*[The ordering activity's contracting officer to insert the name, address, telephone number, and email address for the*

*ordering activity's Ombudsman or provide the URL address where this information may be found.]*

(3) Before consulting with the task-order and delivery-order Ombudsman for the ordering activity, the Contractor is encouraged to first address complaints with the ordering activity's Contracting Officer for resolution. When requested by the Contractor, the task-order and delivery-order Ombudsman for the ordering activity may keep the identity of the concerned party or entity confidential, unless prohibited by law or agency procedure.

**(End of clause)**

**Billing Code: 6820-EP**

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